

NAL/Acct. No. 815TP0002

FORFEITURE ORDER

Released: March 5, 1998

By the Compliance and Information Bureau:

1. Before the Bureau is a Notice of Apparent Liability ("NAL"), issued on December 29, 1997, and the response thereto, filed by Doug Wilhite, President of Wing Communications, Inc., on January 30, 1998, requesting that the Bureau dismiss the NAL. The NAL proposes imposition of a forfeiture in the amount of \$2,000, pursuant to Section 503(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §503(b), against Wings Communications, Inc., licensee of radio station WELE(AM) in Ormond, FL, for willful and continuous violations of Section 73.1590(a)(6) of the rules, 47 C.F.R. §73.1590(a)(6). For the reasons noted below, we are affirming the \$2,000 monetary forfeiture.

2. The NAL was issued to Wings Communications, Inc. for continuously failing to make required equipment performance measurements annually with no more than 14 months between measurements. In the response to the NAL, on behalf of the licensee of WELE(AM), Mr. Wilhite admits to failing to make the required performance equipment measurements in the manner prescribed. However, he requests cancellation of the forfeiture due to "lack of understanding of the nature of the requirements." Mr. Wilhite claims that once the nature of the requirement was understood, all efforts were made to bring the station into compliance. Additionally, Mr. Wilhite recognizes the licensee's responsibility for knowledge of, and compliance with, all applicable sections of the Commission's rules, which include the equipment performance measurements, and apologizes for the licensee's ignorance. Mr. Wilhite, however, disputes that the violation was willful.

3. On November 21, 1996, an engineer from the Compliance and Information Bureau's (CIB) Tampa Field Office, inspected radio station WELE(AM), Ormond Beach, FL. The inspection revealed several violations of the Commission's Rules, including a violation of 47 C.F.R. § 73.1590(a)(6). On December 11, 1996, an Official Notice of Violation (NOV) was issued to Wings Communications, Inc. by the Tampa Field Office. On December 23, 1996, the Tampa Field Office received a written response to the NOV from Mr. Doug Wilhite, Chief Engineer, WELE(AM). Mr. Wilhite acknowledged the technical and operational deficiencies that led to the violations. In regard to the violation of 47 C.F.R.

§ 73.1590(a)(6), he stated that, "(A)ll equipment performance tests will be completed within the month." On February 20, 1997, an engineer from the Tampa Field Office, reinspected radio station WELE(AM). The reinspection revealed that the equipment performance measurements had not been made despite Mr. Wilhite's assurances in his response to the NOV. Mr. Wilhite stated during the reinspection that he didn't know what the equipment performance measurements were, a direct contradiction of his response to the NOV and the explanation given in the NOV itself.

4. Notwithstanding Mr. Wilhite's misunderstanding regarding the term, the violation was willful.¹ Additionally, while Mr. Wilhite's apology on behalf of Wings Communications is commendable, it does not exculpate the licensee from responsibility for compliance with the terms of their license.

5. Based on the violation in the instant case, the Bureau issued the forfeiture pursuant to Section 503 of the Act, 47 U.S.C. §503, and Section 1.80 of the rules, 47 C.F.R. §1.80. In assessing forfeitures, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. 47 U.S.C. §503(b)(2)(D). In the response, the licensee has offered no information concerning any relevant mitigating factors or his inability to pay. Based upon the above factors, we find that a forfeiture in the amount of \$2,000 is appropriate.

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to 47 U.S.C. §503(b), and Section 1.80 of the Commission's Rules, 47 C.F.R. §1.80, **WINGS COMMUNICATIONS, INC. IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2,000 for willful and continuous violation of FCC Rule 73.1590(a)(6), 47 C.F.R. §73.1590(a)(6).

7. **IT IS FURTHER ORDERED**, pursuant to Section 1.80(f) of the Commission's Rules, 47 C.F.R. §1.80(f), that WINGS COMMUNICATIONS, INC. shall, within thirty (30) days of the release of this Forfeiture Order, pay the full amount of the forfeiture. Forfeitures shall be paid by check, money order or credit card, with the appropriate documentation, made payable to the Federal Communications Commission.² The remittance should be marked NAL/Acct. No.:815TP0002, and mailed to the following address:

Federal Communications Commission
Post Office Box 73482
Chicago, IL 60673-7482

¹Section 312 (f)(1), which applies to Section 503(b), provides: [t]he term "willful," when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States. See Southern California Broadcasting Co., 6 FCC Rcd 4387 (1991).

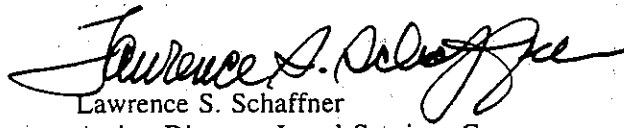
² Requests for payment under installment plans should be mailed to: Chief, Billings and Collections, mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules. Contact Chief, Billings and Collections at (202) 418-1995 for more information on payments by credit card.

Petitions for Reconsideration pursuant to Section 1.106, 47 C.F.R. §1.106 of the Rules, or Applications for Review pursuant to Section 1.115, 47 C.F.R. §1.115, should be sent to:

Federal Communications Commission
Chief, Compliance Division
Compliance and Information Bureau
1919 M Street, N.W.
Washington, D.C. 20554
ATTN: Mail Stop 1500E3-MSL

8. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent certified mail, return receipt requested, to Wings Communications, Inc.

FEDERAL COMMUNICATIONS COMMISSION



Lawrence S. Schaffner
Acting Director, Legal Services Group
Compliance Division
Compliance and Information Bureau